



TABLE OF CONTENTS

TRIAL BRIEF

|     |  |    |
|-----|--|----|
| A.  | FACTUAL CONTENTIONS  | 1  |
|     | <u>Camacho Made Vulgar Sexual Remarks to and Sexually Touched Plaintiff</u>        |    |
|     | <u>Intervenors</u>   | 2  |
|     | <u>Camacho Sexually Touched Plaintiff-Intervenors</u>                              | 2  |
|     | <u>Camacho Engaged in other Sexually Suggestive Behavior Around Plaintiff;</u>     |    |
|     | <u>Intervenors</u>   | 3  |
|     | <u>Leo Palace Management Knew About the Harassment in or about Early June</u>      | 3  |
|     | <u>Leo Palace Management did not Take Adequate Steps to Address the</u>            |    |
|     | <u>Harassment</u>  | 4  |
|     | <u>The Hostile Work Environment caused by Camacho Continued after</u>              |    |
|     | <u>She was Terminated</u>  | 6  |
|     | <u>Leo Palace Retaliated Against Ms. Holbrook and Ms. Taimanglo</u>                | 6  |
|     | <u>Plaintiff-Intervenors Suffered Emotional Distress as a result of the Sexual</u> |    |
|     | <u>Harassment and Retaliation</u>  |    |
| B.  | LEGAL BRIEF  |    |
| i   | <u>Issues of Law</u>   | 8  |
| a.  | Sexual Harassment  | 8  |
| b.  | Retaliation  | 10 |
| c.  | Compensatory Damages, Back Pay & Front Pay   | 13 |
| d.  | Punitive Damages   | 13 |
| e.  | Injunctive Relief  | 14 |
| ii. | <u>Evidentiary Problems</u>  |    |
| C.  | ATTORNEYS FEES   | 15 |
| D.  | ABANDONMENT OF ISSUES  | 17 |

TABLE OF AUTHORITIES

CASES

|   |        |
|---|--------|
| <i>Ass'n of Mexican-Am. Educators v. California</i> , 231 F.3d 572 (9th Cir. 2000)..... | 16     |
| <i>Burlington N. &amp; Santa Fe Ry. Co. v. White</i> ,                                  |        |
| -- U.S. ----, 126 S. Ct. 2405 (2006) .....  | 10, 11 |
| <i>Casa Marie Hogar v. Geriatrico, Inc., et al.</i> , 38 F.3d 615 (1994) .....          | 16     |
| <i>Christiansburg Garment Co. v. EEOC</i> , 434 U.S. 412 (1978) .....                   | 16     |
| <i>Draper v. Couer Rochester, Inc.</i> , 147 F.3d 1104 (1998) .....                     | 12     |
| <i>EEOC v. Goodyear Aerospace Corp.</i> , 813 F.2d 1539 (9th Cir. 1987) .....           | 14, 15 |
| <i>Fuller v. City of Oakland</i> , 47 F.3d 1522 (9th Cir. 1995) .....                   | 9      |
| <i>Gen. Tel. of the N.W., Inc. v. EEOC</i> , 446 U.S. 318 (1980) .....                  | 14     |
| <i>Harris v. Forklift Systems, Inc.</i> , 510 U.S. 17 (1993) .....                      | 8, 9   |
| <i>Kolstad v. Am. Dental Association</i> , 527 U.S. 526 (1999) .....                    | 13, 14 |
| <i>McGinest v. GTE Serv. Co.</i> , 360 F.3d 1103 (9th Cir. 2004) .....                  | 9, 10  |
| <i>Meritor Savings Bank v. Vinson</i> , 477 U.S. 57 (1986) .....                        | 9      |
| <i>Nat'l R.R. Passenger Corp. v. Morgan</i> , 536 U.S. 101 (2002) .....                 | 9      |
| <i>Nichols v. Azteca Rest. Enters.</i> , 256 F.3d 864 (9th Cir. 2001) .....             | 9      |
| <i>Oncale v. Sundowner Offshore Servs., Inc.</i> , 523 U.S. 75 (1998) .....             | 11     |
| <i>Passantino v. Johnson &amp; Johnson Consumer Products</i> ,                          |        |
| 212 F.3d 493 (9th Cir. 2000) .....  | 13     |
| <i>Porter v. Cal. Dept. of Corr.</i> , 419 F.3d 885 (9th Cir. 2005) .....               | 11     |
| <i>Ray v. Henderson</i> , 217 F.3d 1234 (9th Cir. 2000) .....                           | 11     |
| <i>Rene v. MGM Grand Hotel</i> , 305 F.3d 1061 (2002) (en banc) .....                   | 10     |
| <i>Stanley v. Univ. of S. Cal.</i> ,  |        |
| 178 F.3d 1069 (9th Cir. 1999), <i>cert denied</i> , 528 U.S. 1022 (1999) .....          | 16     |
| <i>Steiner v. Showboat Operating Co.</i> , 25 F.3d 1459 (9th Cir.1994) .....            | 12     |

1 *Wallace v. City of San Diego*, 479 F.3d 616 (9th Cir. 2007) .....12

2  
3 STATUTES

4 42 U.S.C. § 1981a(b)(1).....13  
5 42 U.S.C. § 1988.....16  
6 42 U.S.C. § 1988(b).....16  
7 42 U.S.C.A. § 2000d et seq.....16

8 RULES

9  
10 Federal Rule of Civil Procedure 54(d)(1) .....15

11  
12  
13  
14  
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16  
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1 The United States Equal Employment Opportunity Commission hereby files its  
2 Trial Brief pursuant to LR 16.7(b).

3 **TRIAL BRIEF**

4 **A. FACTUAL CONTENTIONS**

5 Plaintiff EEOC is the agency of the United States of America charged with the  
6 administration, interpretation, and enforcement of Title VII of the Civil Rights Act of  
7 1964. The EEOC represents the public interest in securing an employment environment  
8 free of discrimination, and seeks relief on behalf of the three Plaintiff-Intervenors in this  
9 suit, Jennifer Holbrook, Vivienne Villanueva, and Rosemarie Taimanglo (collectively  
10 "Plaintiff-Intervenors").

11 EEOC alleges Defendant Leo Palace Resort ("Leo Palace" or "Defendant")  
12 subjected Plaintiff-Intervenors to a hostile work environment on the basis of sex.  
13 Beginning in or about May 2004, a female co-worker, Christine Camacho, began  
14 sexually harassing Plaintiff-Intervenors (at first Ms. Taimanglo and Ms. Villanueva, then  
15 in June, Ms. Holbrook) by making sexually lewd and graphic remarks to or in the  
16 presence of Plaintiff-Intervenors, sexually touching Plaintiff-Intervenors, and engaging in  
17 other sexually suggestive behavior. Leo Palace's managers and supervisors knew or  
18 should have known about the harassment on or about the second week of June but did  
19 nothing to remedy or correct the situation until two months later in August 2004.  
20 Moreover, Defendant did not take adequate or reasonable steps to prevent such  
21 harassment from occurring. Finally, EEOC alleges that after Ms. Holbrook and Ms.  
22 Taimanglo asserted their rights under Title VII, LeoPalace retaliated against them by  
23 subjecting them to hostility and intimidation from managers, increased scrutiny, docking  
24 their hours, and causing their constructive discharge.

25 Rosemarie Taimanglo worked as a front desk supervisor at Leo Palace in 2004, a  
26 position which she had held since July 1, 2003. Jennifer Holbrook began working as a  
27 front desk clerk at Leo Palace on June 7, 2004. Vivienne Villanueva started working as a  
28

1 front desk clerk at Leo Palace on June 2, 2003. On May 10, 2004, Christine Camacho  
2 began work as a front desk clerk at Leo Palace. Ms. Camacho is a lesbian.

3 **Camacho Made Vulgar Sexual Remarks to and Sexually Touched Plaintiff**

4 **Intervenors**

5 Christina Camacho began engaging in sexually inappropriate behavior towards  
6 Plaintiff-Intervenors shortly after she began her employment with Leo Palace. Beginning  
7 in May 2004, Camacho made almost daily sexual comments to or in the presence of  
8 Plaintiff-Intervenors. For example, in May 2004, Camacho said that she would make a  
9 sandwich out of her coworkers and eat them, using "eat" in its sexually suggestive sense.  
10 In the first week of June, Camacho told Taimanglo that "eating [Taimanglo] tonight  
11 would taste better than the lunch she just had." Camacho would talk about her sexual  
12 relations with her girlfriend in front of Villanueva, Taimanglo, and Holbrook on an  
13 almost daily basis. Camacho told Villanueva that she used dildos with her girlfriend.  
14 Camacho also told Holbrook that Camacho would enjoy having oral sex when a female is  
15 menstruating. Camacho admitted to making sexual jokes, using sexually explicit  
16 language, talking about her sexual relations with her girlfriend, and to making a comment  
17 about having oral sex while her girlfriend was menstruating.

18 In addition, Camacho made sexually suggestive remarks about or to guests.  
19 During May or June 2004, Camacho made comments to the effect of "nice boob, nice  
20 ass" about a female guest. Taimanglo also heard Camacho tell hotel guests that a box  
21 from the bridal department contained a vibrator. Camacho recalls making the latter  
22 comment.

23 **Camacho Sexually Touched Plaintiff-Intervenors**

24 In early June 2004, Camacho approached Villanueva and "all of a sudden, she put  
25 her right hand on [Ms. Villanueva's] stomach and her left to [Ms. Villanueva's back] and  
26 started to hump [her] and grind [her]." Camacho grabbed Jennifer Holbrook's hand and  
27 tried to place it on Camacho's breast and asked whether her breasts were more like  
28 watermelons or melons. Camacho also tried to place Taimanglo's hand on Camacho's

1 breast at least four times. In late June or early July, Camacho tried to stick her hand up  
2 Ms. Holbrook's skirt and told Ms. Holbrook that she wanted to feel if she was wet.

3 In July, Camacho slapped Taimanglo on the buttocks as she was either getting into  
4 or out of the shuttle van. Camacho also slapped Ms. Holbrook on the buttocks in July  
5 and told Ms. Holbrook that she was sorry but that she couldn't help herself. On August  
6 10, 2004, Camacho slapped Taimanglo on the buttocks again. Ms. Camacho admits  
7 slapping Ms. Villanueva and Ms. Holbrook on the buttocks.

8 **Camacho Engaged in other Sexually Suggestive Behavior Around Plaintiff-**  
9 **Intervenors**

10 On several occasions, Camacho placed objects like balloons or rolled up towels  
11 near her crotch and used them to simulate a penis. On one occasion, Ms. Villanueva  
12 witnessed that Camacho placed a balloon at her crotch and asked a coworker if he wanted  
13 to "dick sword fight." Camacho used rolled up tissue paper to simulate a penis on yet  
14 another occasion. She also placed rolled up paper towels in her pants and Mr. Suzuki, the  
15 front desk manager, was also present. Villanueva also observed Camacho stick a  
16 mannequin hand down her pants to scratch her private area. Ms Camacho admitted that  
17 she rolled up towels or a wash cloth to simulate a penis.

18 **Leo Palace Management Knew About the Harassment in or about Early June**

19 Ms. Villanueva and Ms. Taimanglo informed Leo Palace managers and other  
20 supervisors about Camacho's sexually harassing behavior as early as June 2004. Ms.  
21 Villanueva told several supervisors about Camacho's physical attack on her around the  
22 second week of June. Ms. Taimanglo and Ms. Villanueva both informed the front desk  
23 night supervisor, Greg Perez, that Camacho had physically assaulted Ms. Villanueva.

24 Supervisor Greg Perez also informed Leo Palace management about Christina  
25 Camacho's inappropriate behavior towards Vivienne Villanueva in June 2004. He spoke  
26 with Satoshi Suzuki, the front desk manager, about Camacho harassing the women  
27 behind the front desk and asked if he could speak with May Paulino, the human resources  
28 manager, about it. Mr. Perez spoke with Ms. Paulino and then told Mr. Suzuki he had

1 spoken with Ms. Paulino. On or about the third week of June 2004, Mr. Perez placed a  
2 report about the Villanueva incident in the inter-office mail to Human Resources.

3 Ms. Taimanglo informed other managers about the Villanueva incident and  
4 Camacho's other sexually harassing behavior in June and July 2004. Ms. Taimanglo first  
5 told Mr. Suzuki, the front desk manager, about Camacho's sexually inappropriate  
6 behavior in June 2004. Ms. Taimanglo told Hideo Iijima, another Leo Palace manager,  
7 about Camacho's comments to the guest regarding the vibrator. Mr. Iijima admitted to  
8 Ms. Paulino, Mr. Suzuki, and Yutaka Maruyama, the general manager, that he knew  
9 Camacho was sexually harassing Plaintiff-Intervenors. Ms. Taimanglo told Greg Perez  
10 that Camacho was engaging in sexually inappropriate behavior in front of customers and  
11 that the other women at the front desk were complaining about Camacho's sexual  
12 aggressiveness toward them. Ms. Taimanglo told May Paulino about the harassing  
13 behavior on July 1, 2004. During July 2004, Ms. Taimanglo repeatedly asked Mr. Suzuki  
14 what he was going to do about Camacho's sexually harassing behavior.

15 **Leo Palace Management did not Take Adequate Steps to Address the**  
16 **Harassment**

17 As an initial matter, Leo Palace's policies regarding sexual harassment were  
18 inadequate. Leo Palace's stated sexual harassment policy did not conform to standard  
19 practices. Additionally, Defendant did not put up required EEOC posters, did not train  
20 non-supervisory employees regarding sexual harassment, and failed to distribute its  
21 sexual harassment policy to employees. Likewise, many of the managers had not  
22 attended sexual harassment training.

23 Leo Palace's response to Plaintiff-Intervenors' complaints was also inadequate.  
24 When Ms. Villanueva told her supervisors or managers about the humping incident,  
25 instead of correcting Camacho's behavior or reporting the behavior to human resources  
26 or management, some of the supervisors and managers laughed or acted like Ms.  
27 Villanueva were joking. Though Mr. Perez knew that Camacho was still harassing  
28



1 Plaintiff-Intervenors, he felt that he could not go back to Ms. Paulino again because “she  
2 [would] make[] life hard for [him].”

3 Although Ms. Taimanglo verbally counseled Camacho about her behavior,  
4 Camacho continued to engage in sexually inappropriate behavior. However, Ms.  
5 Taimanglo did not have the authority to suspend employees or send them home, and had  
6 to get approval from Mr. Suzuki before writing an employee up or before going to  
7 Human Resources. In response to Taimanglo’s July inquiries about what LeoPalace was  
8 going to do about Camacho, Ms. Taimanglo was told by Mr. Suzuki and Ms. Paulino that  
9 Leo Palace would not be terminating Camacho.

10 Further, although Leo Palace managers knew about the harassing behavior as early  
11 as the second week of June, they allowed Camacho’s behavior to continue through  
12 August. Mr. Suzuki told Ms. Paulino that, even though he was aware of the complaints  
13 about Camacho, he could not terminate her when he found out about it. Mr. Suzuki also  
14 told Ms. Paulino that he had not counseled Camacho about her behavior despite knowing  
15 that Camacho had behaved inappropriately to Ms. Villanueva and Ms. Holbrook. In  
16 addition, he knew about Ms. Taimanglo’s allegations against Camacho but he could not  
17 terminate Camacho because he was “too busy” and short-staffed.

18 There was no investigation regarding Camacho’s behavior until August 11, 2004.  
19 Finally, after allowing Plaintiff-Intervenors to be subjected to Camacho’s sexually  
20 harassing behavior for two months, Leo Palace investigated Plaintiff-Intervenors’  
21 complaints and terminated Camacho on August 13, 2004. At no time did Mr. Maruyama,  
22 the hotel general manager, discipline Ms. Paulino, Mr. Suzuki, or Mr. Iijima for their  
23 delay in responding to and investigating the complaints about Camacho’s sexual  
24 harassment.

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1           **The Hostile Work Environment caused by Camacho Continued after she**  
2           **was Terminated**

3           Ms. Villanueva felt afraid that Camacho was going to retaliate against her. She  
4           had to ride the shuttle van with Camacho after Leo Palace suspended Camacho on August  
5           11, 2004. After Leo Palace terminated Camacho, she called Ms. Villanueva at work,  
6           resulting in Ms. Villanueva feeling further harassed.

7           In 2004, employees who had sexually harassed other employees were allowed  
8           back on Leo Palace property. Thus, after Camacho was terminated, she stayed at one of  
9           the condominiums at Leo Palace and called Plaintiff-Intervenors. Plaintiff-Intervenors  
10          informed management about Camacho's presence on the property. However, it took at  
11          least two hours for security to remedy the situation. Moreover, Mr. Iijima became angry  
12          with Ms. Holbrook about Camacho being on the property.

13           **Leo Palace Retaliated Against Ms. Holbrook and Ms. Taimanglo**

14          On August 16, 2004, Plaintiff-Intervenors' attorney Phil Torres sent a letter to Leo  
15          Palace in which he informed Leo Palace that his clients might take the claim to court and  
16          that he had spoken with the EEOC. On the date that Mr. Maruyama received Mr. Torres'  
17          letter, Mr. Maruyama confronted Ms. Holbrook about the letter in Ms. Taimanglo's  
18          presence. After the incident, Mr. Maruyama continued to pace back and forth in the  
19          lobby area. He testified that he was "worried that the [Plaintiff-Intervenors would take  
20          [his] expression against [him], or something like that, so honestly [he] was afraid to talk  
21          to them." He also testified that there were "a lot of reasons" for treating the Plaintiff-  
22          Intervenors differently after Leo Palace received Mr. Torres' letter, "because they're  
23          suing the company and still working for the company, so I think employees, you know,  
24          around them will see the difference before they sued the company and after they sued the  
25          company."

26          After Mr. Torres informed Leo Palace that the Plaintiff-Intervenors were  
27          considering filing an EEOC charge, Ms. Taimanglo and Ms. Holbrook experienced other  
28          negative changes in their working environment. Ms. Paulino avoided talking to Plaintiff-

1 Intervenor because "they were already filing." After Camacho was terminated the rest  
2 of management also did not talk to Ms. Holbrook and Ms. Taimanglo as they did prior to  
3 the termination.

4 When Ms. Taimanglo returned from a two-week leave recommended by her  
5 therapist due to the harassment at Leo Palace, Mr. Maruyama approached Ms. Taimanglo  
6 and asked her sarcastically whether there had been any sexual harassment reports. Mr.  
7 Iijima approached Ms. Taimanglo and told her "that out of the three girls, the ladies, [she]  
8 was the biggest voice." The conversation upset Ms. Taimanglo and she went into another  
9 room and cried. Mr. Maruyama commented on the fact that Ms. Taimanglo had been  
10 crying and said "I didn't know local girls cry." Later, Mr. Iijima spoke with Ms.  
11 Taimanglo and apologized for upsetting her and told her that Mr. Maruyama had told him  
12 that the Plaintiff-Intervenor was "dangerous." At one point, Mr. Iijima also changed  
13 Ms. Taimanglo's shift from a swing shift to a morning shift, but Ms. Taimanglo did not  
14 complain because she was "scared [she] might get fired for complaining."

15 Prior to her attorney's letter, Ms. Holbrook had a good working relationship with  
16 Mr. Maruyama. After Mr. Maruyama received Mr. Torres' letter, he would glare at Ms.  
17 Holbrook and give her the silent treatment. There was no further discussion about Ms.  
18 Holbrook becoming Mr. Maruyama's executive assistant. Despite a short-staff situation,  
19 Ms. Holbrook's schedule was changed from two days off to three days off. Ms.  
20 Holbrook was also given a shift with an hour and forty-five minutes less time. When Ms.  
21 Holbrook asked Mr. Suzuki why he was cutting her hours, he said he did not know. After  
22 a shift supervisor asked Mr. Suzuki why he was cutting Ms. Holbrook's hours, Mr.  
23 Suzuki responded to Ms. Holbrook that "It's up to you if you want to stay or leave."

24 Because of their treatment, Ms. Holbrook and Ms. Taimanglo felt that they had no  
25 choice but to resign. Ms. Holbrook left LeoPalace on August 28, 2007. On October 11,  
26 2004, Ms. Taimanglo resigned her job at Leo Palace because, "management . . . made  
27 [her] feel that if [she] cried for help . . . they won't correct the problem and made [her]  
28 feel that [she] shouldn't have said anything."

1           **Plaintiff-Intervenors Suffered Emotional Distress as a result of the Sexual**  
2           **Harassment and Retaliation**

3           As a result of Camacho's harassing behavior and management's initial inaction  
4 and subsequent behavior, Plaintiff-Intervenors suffered increased, stress, anxiety and  
5 fear. Ms. Taimanglo and Ms. Holbrook sought therapy from Dr. Lilli Perez-Iyechad.  
6 Ms. Villanueva received treatment from Tom Babauta, MSW. Dr. Lilli Perez-Iyechad  
7 diagnosed Ms. Villanueva and Ms. Holbrook with post traumatic stress disorder and  
8 occupational problems. Regarding Ms. Villanueva, Mr. Babauta wrote, "Ms. Villanueva  
9 did not feel safe at Leo Palace. She stated that she was under an extreme amount of  
10 stress and was overwhelmed."

11           Ms. Holbrook felt depressed and anxious. Ms. Villanueva felt worried and scared.  
12 She also suffered from sleeplessness and headaches. Ms. Taimanglo went to see a  
13 therapist because she was "always crying at work." Dr. Perez Iyechad had Ms.  
14 Taimanglo's doctor prescribe her Xanax. Ms. Taimanglo did not stop taking the drug  
15 everyday until after she left Leo Palace. Moreover, Ms. Taimanglo left the job she  
16 obtained after leaving Leo Palace because she "fell into a depression because of what  
17 happened to me at Leo Palace Resort."

18       **B.     LEGAL BRIEF**

19           i.     Issues of Law

20               a.     *Sexual Harassment*

21           Sexual harassment consists of unwelcome sexual advances, requests for sexual  
22 favors, and other verbal or physical conduct of a sexual nature when such conduct has the  
23 purpose or effect of unreasonably interfering with an individual's work performance or  
24 creating an intimidating, hostile or offensive environment. *Harris v. Forklift Systems,*  
25 *Inc.*, 510 U.S. 17 (1993). To establish a claim of hostile environment, the complained-of  
26 conduct must be unwelcome. The conduct must be undertaken because of the claimant's  
27 sex and must be severe or pervasive so that it affected the terms, conditions and  
28

1 privileges of employment and created an abusive work environment. *Id.* at 21 (citing  
2 *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986)).

3 Some of the factors relevant to determining whether the conduct was severe or  
4 pervasive include:

5 the frequency of the discriminatory conduct, its severity; whether it is  
6 physically threatening or humiliating, or a mere offensive utterance; and  
7 whether it unreasonably interferes with an employee's work performance.

8 *Harris v. Forklift Systems, Inc.*, 510 U.S. at 23.

9 The hostile work environment is evaluated based on the totality of the  
10 circumstances. *Id.* Moreover, the Defendant cannot present a piecemeal defense by  
11 disaggregating the hostile acts that each claimant experienced, witnessed, or learned of.  
12 As the Supreme Court explained, "[a] hostile work environment claim is comprised of a  
13 series of separate acts that collectively constitute one 'unlawful employment practice.'" *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 117 (2002). "The statute does not  
14 separate individual acts that are part of the hostile environment claim from the whole for  
15 purposes of timely filing and liability." *Id.* at 118.

17 For an employer to be liable for harassment by a coworker, the plaintiff must  
18 demonstrate that "the employer knew or should have known of the harassment but did not  
19 take adequate steps to address it." *McGinest v. GTE Serv. Co.*, 360 F.3d 1103, 1119 (9th  
20 Cir. 2004) (quotation omitted). Once an employer knows or should have known that  
21 harassment is occurring, "a remedial obligation kicks in." *Nichols v. Azteca Rest.*  
22 *Enters.*, 256 F.3d 864, 876 (9th Cir. 2001) (quoting *Fuller v. City of Oakland*, 47 F.3d  
23 1522, 1528 (9th Cir. 1995)). Remedies must "be reasonably calculated to end the  
24 harassment." *Id.* (quotation omitted). In addition, remedies are reasonable if they "(1)  
25 'stop harassment by the person who engaged in the harassment;' and (2) 'persuade  
26 potential harassers to refrain from unlawful conduct.'" *McGinest*, 360 F.3d at 1120  
27 (quotation omitted). Additionally, "[t]o be adequate, an employer must intervene  
28 promptly." *Id.* (quotation omitted). Finally, an employer's remedial measures "must

1 include some form of disciplinary action, . . . which must be ‘proportionate[] to the  
2 seriousness of the offense.’” *Id.* (quotation omitted).

3 EEOC will be able to demonstrate that harassment was unwanted. Plaintiff-  
4 Intervenor complained to management, went to an attorney, and filed a charge with the  
5 EEOC. Similarly, EEOC will be able to demonstrate that the behavior was because of  
6 sex. Camacho as a lesbian creates an inference that she harassed the three women  
7 because of their sex, female. In addition, the comments Camacho made were sexual in  
8 nature. Moreover, her physical harassment of Plaintiff-Intervenor involved areas of the  
9 body “linked to sexuality.” *See Rene v. MGM Grand Hotel*, 305 F.3d 1061, 1066  
10 (“[S]uch harassment – grabbing, poking, rubbing or mouthing areas of the body linked to  
11 sexuality – is inescapably ‘because of . . . sex.’”) (quotation omitted). Additionally,  
12 EEOC will be able to demonstrate the harassment was severe or pervasive. As discussed  
13 above, Camacho made sexual comments on an almost daily basis for two months.  
14 Moreover, she physically assaulted each Plaintiff-Intervenor at least once.

15 Finally, EEOC will be able to demonstrate that Leo Palace knew or should have  
16 known about the harassment but did not take adequate steps to address it. Evidence  
17 exists that Leo Palace’s management knew about the Villanueva incident as early as the  
18 second week of June. Moreover, Ms. Paulino and Mr. Suzuki’s testimony will  
19 demonstrate that they knew about the harassment by at least the end of June. Despite  
20 management’s knowledge of the harassment, they did nothing to address it until the  
21 second week of August. The harassment did not stop but rather continued during that  
22 entire period. Likewise, because Leo Palace had inadequate sexual harassment policies,  
23 it did not take adequate steps to prevent the harassment from occurring or to persuade  
24 potential harassers from unlawful conduct in the first place.

25 *b. Retaliation*

26 Unlike the substantive provisions of Title VII, the anti-retaliation provision “is not  
27 limited to discriminatory acts that affect the terms and conditions of employment.”  
28 *Burlington N. & Santa Fe Ry. Co. v. White*, -- U.S. ----, 126 S. Ct. 2405, 2412-13 (2006).

1 The EEOC must present evidence that Ms. Holbrook and Ms. Taimanglo engaged in a  
2 protected activity, that the Defendant took an adverse employment action against them,  
3 and that there is a causal connection between the protected activity and the adverse  
4 employment action. *Ray v. Henderson*, 217 F.3d 1234, 1240 (9th Cir. 2000). If the  
5 Defendant can establish a legitimate reason for the adverse employment action, the  
6 Plaintiff can also rebut by proving pretext. *Id.*

7 A plaintiff shows that an employment action is materially adverse if “a reasonable  
8 employee would have found the challenged action materially adverse, which in this  
9 context means it well might have dissuaded a reasonable worker from making or  
10 supporting a charge of discrimination.” *Burlington*, 126 S. Ct. at 2415 (quotation and  
11 internal quotation marks omitted). Whether an action is “materially adverse depends on  
12 the circumstances of the particular case, and ‘should be judged from the perspective of a  
13 reasonable person in the plaintiff’s position, considering all the circumstances.’” *Id.* at  
14 2417 (quoting *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 81 (1998)). In  
15 *Burlington*, the Court noted that, in context, changes to an employees’ schedule could be  
16 retaliatory. *Id.* at 2415. The Ninth Circuit Court of Appeals has found that  
17 “circumstantial evidence of a ‘pattern of antagonism’ following protected conduct can  
18 also give rise to inference” of retaliation. *Porter v. Cal. Dept. of Corr.*, 419 F.3d 885, 894  
19 (9th Cir. 2005) (quotation omitted).

20 EEOC will demonstrate that Leo Palace retaliated against Ms. Taimanglo and Ms.  
21 Holbrook. Both women engaged in a protected activity by complaining to human  
22 resources and asserting their rights under Title VII. LeoPalace also took an adverse  
23 employment action against them. Ms. Holbrook and Ms. Taimanglo were subjected to  
24 hostility and intimidation from management employees. Their hours were reduced.

25 Moreover, Ms. Taimanglo and Ms. Holbrook were subjected to an adverse action  
26 when they were constructively discharged. “A constructive discharge occurs when a  
27 person quits his job under circumstances in which a reasonable person would feel that the  
28 conditions of employment have become intolerable.” *Draper v. Couer Rochester, Inc.*,



1 147 F.3d 1104, 1110 (1998) (citing *Steiner v. Showboat Operating Co.*, 25 F.3d 1459,  
2 1465 (9th Cir.1994)). This requires a plaintiff to “show some aggravating factors, such  
3 as a continuous pattern of discriminatory treatment.” *Wallace v. City of San Diego*, 479  
4 F.3d 616, 626 (9th Cir. 2007) (quotation omitted). Further, a jury may take into account  
5 “[t]he frequency and freshness of the instances of harassment” into the determination of  
6 whether an individual was constructively discharged. *Draper*, 147 F.3d at 1110 n.2.

7 EEOC will be able to demonstrate that Ms. Taimanglo and Ms. Holbrook were  
8 constructively discharged. Camacho’s conduct should be considered part of the  
9 circumstances because it was Leo Palace’s delayed action regarding Camacho’s conduct  
10 that led, in part, to Ms. Holbrook’s and Ms. Taimanglo’s intolerable working conditions  
11 and constitutes a continuing pattern of discrimination. Subsequent to Camacho’s  
12 termination, Ms. Holbrook’s and Ms. Taimanglo’s therapists noted that management’s  
13 inaction had exacerbated their anxiety. Further, the hostile conduct towards Ms.  
14 Holbrook continued because Mr. Maruyama intimidated her, Mr. Suzuki cut her hours,  
15 she was no longer being considered for the executive assistant position, and management  
16 was no longer talking to her. Likewise, Ms. Taimanglo was subjected to further hostile  
17 conduct, such as having her shift changed, being subjected to the general manager’s  
18 belittling comments, being ignored, and being singled out as “the loudest voice.” The  
19 freshness and frequency of Camacho’s harassment, the events right after Camacho’s  
20 termination, and the retaliation against Ms. Holbrook and Ms. Taimanglo by Leo Palace  
21 management, would cause a reasonable person to feel the conditions of employment were  
22 intolerable.

23 Finally, EEOC also will be able to demonstrate a causal connection between the  
24 protected activity and the adverse employment action. The proximity in time creates an  
25 inference of causation. In addition, both Mr. Maruyama and Ms. Paulino acknowledged  
26 that they behaved differently around Ms. Taimanglo and Ms. Holbrook after the women  
27 retained an attorney.



1                   c.       *Compensatory Damages, Back Pay& Front Pay*

2           Title VII provides for compensatory and punitive damages for intentional  
3 violations of the Act. Section 1981a(b)(3)(C) establishes a statutory cap of \$300,000 per  
4 plaintiff where the defendant employer has more than 500 employees in each of twenty or  
5 more calendar weeks in either the year prior to or the year in which the discriminatory  
6 conduct occurred. Defendant employed in excess of 500 employees during the relevant  
7 time period. Accordingly, Defendant's liability for punitive and compensatory damages  
8 under Title VII is limited to \$300,000 per Plaintiff-Intervenor. Because Plaintiff-  
9 Intervenors suffered emotional distress as a result of the harassment and retaliation, they  
10 will be entitled to compensatory damages.

11           EEOC seeks backpay, plus pre-judgment interest to be determined at date of  
12 judgment, in the amounts of \$500.00 for Ms. Villanueva, \$11,432.00 for Ms. Taimanglo,  
13 and \$9,000.00 for Ms. Holbrook. EEOC also seeks frontpay in the amounts of \$4620.00  
14 for Ms. Taimanglo and \$9,000.00 for Ms. Holbrook. EEOC additionally seeks lost  
15 benefits in the amounts of \$500.00 for Ms. Holbrook and Ms. Villanueva, and \$4620.00  
16 for Ms. Taimanglo.

17                   d.       *Punitive Damages*

18           Under the terms of the Civil Rights Act of 1991, punitive damages are available in  
19 claims of disparate treatment under Title VII, where the employer has engaged in  
20 intentional discrimination "with malice or with reckless indifference to the federally  
21 protected rights of an aggrieved individual." 42 U.S.C. § 1981a(b)(1).

22           The Supreme Court explained that "egregious misconduct" while relevant  
23 evidence of the requisite mental state, is not itself required to justify an award of punitive  
24 damages under Section 1981a. *Kolstad v. Am. Dental Association*, 527 U.S. 526 (1999).  
25 The correct standard is whether the employer had "at least discriminate[d] in the face of a  
26 perceived risk that its actions will violate federal law." *Id.* at 2121. In general,  
27 intentional discrimination is enough to establish punitive damages liability. *Passantino v.*  
28 *Johnson & Johnson Consumer Products*, 212 F.3d 493, 515 (9th Cir. 2000).

1 The Ninth Circuit has further explained:

2 Although the purpose of Title VII is served by rewarding employers  
3 who adopt anti-discrimination policies, *see id.* [citing *Kolstad*] it would be  
4 undermined if those policies were not implemented, and were allowed  
5 instead to serve only as a device to allow employers to escape punitive  
6 damages for the discriminatory activities of their managerial employees.

7 *Passantino*, 212 F.3d at 517.

8 EEOC will be able to demonstrate that punitive damages are warranted. Sexual  
9 harassment and retaliation are intentional forms of discrimination under Title VII.  
10 Defendant also was aware of federal hostile work environment law; yet subjected  
11 Plaintiff-Intervenors to a sexually harassing work environment for almost two months  
12 because Defendant was short-staffed. Moreover, the first incident of which Leo Palace  
13 was aware involved a physical assault and Camacho subsequently physically assaulted  
14 both Ms. Holbrook and Ms. Taimanglo. In addition, as discussed above, LeoPalace  
15 utterly failed to put into place effective and appropriate policies. Finally, not only did Leo  
16 Palace force Plaintiff-Intervenors to endure further sexual harassment, it retaliated against  
17 Ms. Holbrook and Ms. Taimanglo when they complained. Accordingly, punitive  
18 damages are warranted.

19 *e. Injunctive Relief*

20 EEOC also seeks injunctive relief under Title VII. EEOC will request the Court to  
21 grant a permanent injunction barring Defendant from engaging in any employment  
22 practice which discriminates on the basis of sex, and order Defendant to institute and  
23 carry out policies, practices and programs, including training programs, posting notice of  
24 the outcome of the suit, and hiring an outside monitor, which eradicate the effects of its  
25 past unlawful employment practices. The EEOC can seek broad injunctive relief when  
26 filing suit as a Plaintiff. *Gen. Tel. of the N.W., Inc. v. EEOC*, 446 U.S. 318, 325 (1980);  
27 *EEOC v. Goodyear Aerospace Corp.*, 813 F.2d 1539, 1543-45 (9th Cir. 1987). Also,  
28 proving employment discrimination entitles the plaintiff to an injunction against

1 discrimination, unless the employer proves that it is unlikely to repeat the practices. *See*  
2 *Goodyear Aerospace Corp.*, 813 F.2d at 1544. An employer which takes curative actions  
3 only after legal action has been taken fails to provide sufficient assurances that it will not  
4 repeat the violation to justify denying an injunction. *Id.*

5 *ii. Evidentiary Problems*

6 a. EEOC anticipates moving *in limine* to preclude the testimony  
7 of Joseph Ishesaki as irrelevant under Federal Rules of Evidence 401, 402, 403 and 404;  
8 and for lack of personal knowledge under Federal Rule of Evidence 602.

9 b. EEOC anticipates moving *in limine* to exclude evidence or  
10 testimony regarding advice that Plaintiff-Intervenors' counsel may have given them  
11 concerning seeking therapy as precluded by attorney/client privilege; and/or irrelevant.

12 c. EEOC anticipates moving *in limine* to preclude evidence or  
13 testimony regarding Plaintiff-Intervenors' past sexual behavior or marital status pursuant  
14 to Federal Rules of Evidence 401, 402, 403, 404, and 412.

15 d. EEOC anticipates moving *in limine* to preclude argument  
16 referring to or characterizing EEOC's Title VII intentional discrimination claims as  
17 claims for negligence.

18 e. In addition, Defendants' Motion for Partial Summary  
19 Judgment -- currently under submission, Plaintiff's Motion for Partial Summary  
20 Judgment -- currently being briefed, and Defendant's Motion to Dismiss the Emotional  
21 Distress Claims of Jennifer Holbrook -- currently being briefed, will possibly affect the  
22 admissibility of certain evidence.

23 **C. ATTORNEY'S FEES**

24 Should EEOC prevail, EEOC will seek its costs, which will include travel costs,  
25 witness fees, and expert costs. EEOC estimates that its total trial costs will be at least  
26 \$55,000. Federal Rule of Civil Procedure 54(d)(1) provides "[u]nless a federal statute,  
27 these rules, or a court order provides otherwise, costs -- other than attorney's fees --  
28 should be allowed the prevailing party." Nonetheless, the court has the discretion to limit

1 or to refuse costs against a civil rights Plaintiff in "important, close, but ultimately  
2 unsuccessful civil rights cases that may have the regrettable effect of discouraging  
3 potential plaintiffs from bringing such cases at all." *See Ass'n of Mexican-Am. Educators*  
4 *v. California*, 231 F.3d 572, 593 (9th Cir. 2000), *Casa Marie Hogar v. Geriatrico, Inc., et*  
5 *al.*, 38 F.3d 615, 618 (1994); *Stanley v. Univ. of S. Cal.*, 178 F.3d 1069, 1079-80 (9th Cir.  
6 1999), *cert denied*, 528 U.S. 1022 (1999) (district court abused its discretion in denying a  
7 losing civil rights plaintiff's motion to re-tax costs without first considering (1) the  
8 plaintiff's financial resources and (2) the chilling effect of imposing such costs on future  
9 civil rights litigants).

10 Pursuant to 42 U.S.C. § 1988(b), the Court may award attorney's fees to the  
11 prevailing party, however, U.S. EEOC is not entitled to attorney's fees:

12 (b) Attorney's fees

13 In any action or proceeding to enforce a provision of . . . title VI of the  
14 Civil Rights Act of 1964 [42 U.S.C.A. § 2000d et seq.] . . . the court, in its  
15 discretion, may allow the prevailing party, other than the United States, a  
16 reasonable attorney's fee as part of the costs. . . .

17 Under 42 U.S.C. § 1988, a court should not assess attorney's fees against Plaintiff "unless  
18 a court finds that his claim was frivolous, unreasonable, or groundless, or that the  
19 plaintiff continued to litigate after it clearly became so." *Christiansburg Garment Co. v.*  
20 *EEOC*, 434 U.S. 412, 422 (1978).

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1 **D. ABANDONMENT OF ISSUES**

2 EEOC does not abandon any issues in its Complaint.

3  
4 Respectfully Submitted,

5  
6 Date: November 5, 2007

United States Equal Employment  
Opportunity Commission

7  
8 By: 

9 Angela Morrison

10 Derek Li

11 Attorneys for Plaintiff  
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